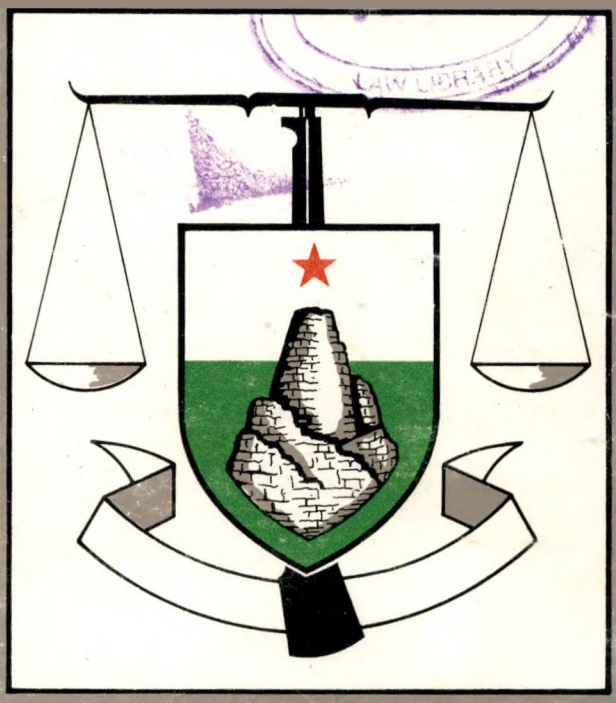

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THE LAW AND MASS RAPE DURING ARMED SOCIAL CONFLICTS: LESSONS FROM THE 1982 COUP ATTEMPT IN KENYA

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1. THE SETTING

On first August 1982 there was armed confrontation between a section of the military forces (Kenya Air Force) and the remainder of the armed organs of government namely, the Army, the General Service Unit, the Police, and the Administrative Police aided by a number of foreign military servicemen, mainly British, American and Israeli. Such armed confrontations, as one of the "last resort" methods of resolving social class contradictions, are historically inevitable as various social classes and strata compete for control of state power particularly in a neo-colonial situation. State power is indispensable to economic and social power in society.

The neo-colonial state which characterises most of Africa is an armed agent of neo-colonialism and imperialism. It superintends over the underdevelopment and exploitation of Africa by a few foreign economic institutions and States in collaboration with a few local comprador and petty bourgeois class strata. The growing population of marginalised, exploited, dispossessed and impoverished workers and peasants carry the burden.

In assessing the overall social class antagonisms and confrontations, particularly their political manifestations evidenced by events such as the August 1982 Coup attempt in Kenya, it is hardly an over-emphasis to insist that we should not lose sight of the finer layers of social contradictions and conflict like those existing between the sexes within a class society. It is for this reason that I find it imperative to reflect on the manner in which women were treated during the August 1982 events in Kenya and the reactions to the same, legal and otherwise.

2. THE AUGUST 1982 COUP ATTEMPT AND MASS RAPE OF FEMALES BY ARMED SERVICEMEN

On August the first 1982, and for a few days thereafter, there were numerous uncontradicted reports of mass rape of women in Nairobi, Nanyuki and Naivasha by government forces that had militarily suppressed the attempt by the Kenya Air Force to take over the government from the civilian "elected" dictators in power. Women were raped in their own homes or taken away from vehicles in the pretext that they were being searched for national identity cards and "looted" property. Most of the raping in Nairobi occurred only in areas of the

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This relieves the prosecution of the difficult task of proving the mental state of the accused. [48] The provision may be formulated to require the accused to prove on a balance of probabilities his defence that he believed the victim to be consenting.

The second requires the introduction of an objective element into the question of the accused's belief. In some jurisdictions, such as some Australian states and New Zealand, the accused's belief that the victim was consenting must be a reasonable one. [49] A variation on this theme is to provide for a separate offence of sexual intercourse under the mistaken belief that there was consent. This was suggested by the Criminal Law Codification Committee of Zimbabwe which has proposed the following section:

> 34. Any male who has vaginal sexual intercourse with a mentally competent female over the age of sixteen or who performs any other indecent act upon her under the mistaken belief which was in the circumstances unreasonable that the female had consented to the sexual intercourse or to the performance of the indecent acts upon her shall be guilty of an offence.

This goes much further than the English law, which provides that the reasonableness of the accused's belief is only taken into account in determining whether the accused is telling the truth. [50]

8. CONCLUSION

I have attempted to examine the question of consent in rape cases with reference to cases in Swaziland, recent research of behavioural scientists, and recent developments in the law in other jurisdictions. The central issue involved in the crime or rape is the question of freedom of choice in sexual matters. No person should be forced to submit to sexual intercourse against her wishes. There is no room for the attitude, noted by Justice Ben Dunn, "It appears that far too many males have it deeply embedded that they have a right to sex with any woman any time." [51]

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48. Connors, op. cit., p. 40.

49. Connors p. 38.

50. Sexual Offences (Amendment) Act 1976 (England and Wales), s. 1 (2).

51. Times of Swaziland 4/4/84.

city where the exploited lower class workers and the army of unemployed stay. It was apparent that apart from roadblocks, the working class areas were the only places where armed servicemen were directed to search for the Air Force servicemen who were at large, and for property looted or "liberated" by the poor. Of course, the soldiers and policemen helped themselves to a lot of such goods from shops, particularly those belonging to people of Asian origin. The raping, like the "looting", also revealed a disproportionately large number of victims of Asian origin. There were reports of a number of the victims of rape of Asian origin committing suicide to avoid the "disgrace" to themselves and "their community". Therefore, apart from the fact that all the victims of rape suffered, Asian women suffered even more. In effect the victims of rape who were of Asiatic origin were subsequently socially compelled to suffer further by putting an end to their lives - a manifestation of the deeply entrenched sexist cultural practices and beliefs of a highly male dominated community.

Let us for a moment now focus briefly on the appearance of Anti-Asian racialism that was manifested during the events of August 1982 in Kenya and then proceed to make a few observations on the social forces that compelled the Asian women victims to take their own lives after being abused by the rapists.

The peripheral capitalist relations of production that was superimposed by the colonial system on various forms of pre-capitalist production systems that prevailed in Kenya up to the early parts of the 20th Century led to the development of extreme forms of social inequalities and abject material deprivation of the masses. Colonial-capitalist "white" racist policies subsequently turned a significant portion of the Asians into a middle-class consisting of the petty-bourgeois such as state bureaucrats, petty-traders and merchants as well as a distinct stable upper strata of the working class. Some of the Asians used the accumulation they made through exploitation of cheap African labour and commercial merchant profiteering to transform themselves into urban property owners, bankers, manufacturers, large scale wholesale and retail traders and various categories of intellectual professionals. An insignificant proportion are, of course, mere proletariats. These are however, kept almost as virtual slave labour in family businesses. Very few, if any belong to the army of the unemployed. Since independence in Kenya in 1963 the whites have remained part of the real ruling economic class having used the colonial state to achieve this dominant position. After independence, the Black petty-bourgeoisie and comprador capitalist elements who hijacked Uhuru from the masses joined hands with the exploiters, represented by major subsidiaries of transnational corporations, both in agricultural production, manufacturing, finance and services. Thus, the monopolies, the local comprador and petty-bourgeois elements, including those of Asian origin have formed the fraternity of exploiters with the Asians being the most visible to the ordinary people. They are either senior policemen, court prosecutors, magistrates and judges, traders, teachers, lawyers, doctors, etc. Although it is the foreign monopolies which are the dominant exploiting force, they hide behind the Corporate Veils. The ordinary, non-class conscious people think that it is the Asians and not the dominant exploiters who are responsible for their miseries. This is not exonerating the exploiting Asians from responsibility over the extreme deprivation that the ordinary Kenyans are subjected to. What is being asserted here is that the fact that the poor masses turned against the lower strata of the exploiting classes (the Asian shops keepers) is not at

all peculiar within the specific class structure prevailing in Kenya. This is particularly so because the indigenous ruling political class that the masses are angry to have close joint business interests with their Asian counterparts. The Asian victims were identified as the most "visible", "alien" oppressor and not neo-colonial imperialist capital and the repressive state apparatus run by Black Kenyans.

In a society where the masses have limited class consciousness the masses could not see that their real enemies were the neo-colonial State and the bourgeois conditions of production which must be destroyed. Such destruction cannot, of course, be made by momentary "recovery" of consumer goods in the shops. The lesson learnt from the so-called "looting" of the shops, apart from expressing the utter deprivation of the people, was that there is absolute need for political education of the masses to make them understand who their real class enemies are and what it takes to destroy the neo-colonial capitalist conditions of production that is responsible for their dehumanisation. It also behoves the petty-bourgeois to realise that their middle class position is not secure from the wrath of the deprived and that they should lend hands in destroying the bourgeoisie before they are destroyed together with them!

What does the foregoing tell us about the relatively larger proportion of women of Asian origin who were raped by government troops during and immediately after the August 1982 Coup attempt in Kenya? The social disruption caused by the conflict situation provided the male rapists with a cover to "get at" the whole Asian community who are visibly and are incorrectly seen as leaders in the cruel game of exploitation in Kenya. Also it reflected the male assertion of social superiority over women within the specific conditions of Kenya. Women of Asian origin even if they are Kenyans are socially proscribed in the male dominated Kenyan-Asian sub-culture from intimate social contact with the Africans who are viewed by Asian ruling circles as the untouchable low class. Ironically men of Asian origin openly "purchase" sexual services from the socially deprived African women. Some of the African men who took part in the rapes may also have seen themselves as simply fighting the class/rape war against men of Asian origin. Class antagonisms, sexism and racism were all interwoven in the incidents of August 1982.

The next question we need to answer is why some of the females of Asian origin who were victims of rape by black government soldiers and policemen went further to punish themselves by committing suicide. Had they not suffered enough being subjected to rape by the brutish men? Their behaviour seems to have reflected the special form of bondage in which women are kept within the Asian group. The level of male domination, exploitation and oppression in the Asian community in Kenya is of such a high level that women are reduced to view themselves as mere objects of exclusive pleasure for their men. The African male is seen by the Asian male as an enemy in terms of class and race and hence unfit and sub-human. The sexist oppressive Asian cultural ideology therefore compels the women to rather die so as to uphold the "honour" of their oppressive and exploitative male than to be alive and live in "shame"! Again, given the limited class consciousness among the population in general and the Asian women in particular, these poor victims internalise their oppression and make it "natural". The Asian males continue to live and thrive economically, of course!

3. THE RAPE OF FEMALES BY MALES DURING ARMED CONFLICT

Without engaging in elaborate description and explanation of various aspects of pscho-social reasons of rape of females by males in general, it is sufficient here to draw attention to the material basis of rape as an expression of class/sex contradictions and antagonisms. The history of most human societies before the socialist era is characterized by the dispossession of women of ownership and control of the basic means of production. This creates social dependence on men (the expropriators) who, in order to ensure that this economically created position is maintained use all means - the law, abusive use of the male sexual organ for rape and other methods to intimidate and coerce women to subject themselves to other men "for protection. In fact the sexual organ has been used by men as a very lethal instrument of intimidation and physical and mental coercion due to its potential to transmit dangerous venereal diseases, AIDS as well as cause pregnancy. Susan Brownmiller [1] details a fairly well researched work on rape over different historical epochs and the circumstances under which this inhuman and primitive act were and continue to be committed.

The master-servant relationship between men and women which date from the era of emergence of private property and the division of society into antagonistic social class is so well reinforced that "good (male) morals" teach women not to propose men for sex or marriage but to wait for the "masters" to take the initiative. No wonder then that most courts in class societies dominated by men still strongly hold the view that women are supposed not to say "yes" to sex and that their protests against aggressive male imposition are to be read to mean consent, unless they fight until they subject themselves to serious bodily injuries! Indeed many case law on Evidence and Criminal Law have often reflected or discussed this view. [2]

The intimidation of women by men through the misuse of the sexual organ penis as an instrument of class/sex struggle is not limited to individual cases but is generalised by men in armed conflict situations. Historically where there are major social conflicts involving armed conflict the women who owe allegiance or "belong" to one group of men (the co-belligerents) are treated as forms of property owned or controlled by the enemy, by men on the opposing side to the conflict. Where this is not done as part of the moral ideology of the whole group party to the conflict, the cataclysmic situation of an armed conflict provide a cover-up for various categories of armed male psycho-paths who are otherwise afraid of women or other men to individually or in bands "get at other men" by damaging their women. This happens quite naturally where the dominant societal ideology is that women are the property of men.

Whatever the other explanations may be it is apparent that conditions created by armed conflict between groups of men do provide

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1. (1976) "Against Our Will" : Men, Women and Rape, Penguin.

2. See, for example, Mangazi v State A.D 47/72, unreported, - question of lack of spirited resistance; Rex v Swigglelaar 1949 (4) SA 237 (C) - question of mere submission as opposed to consent; S v Mupfudza 1982 Z.L.R. 271 (S.C) - question of suspecting women complaints and treating them cautiously; and, R v Morgan and Others (1976) AC 182 - on question of nature and form of consent and resistance expected at law.

opportunities for the rapists to assert male superiority complex over women and/or "to get at" other men. Social property relations and ideology, therefore, get reflected and manifested by males in armed conflict situations in societies divided into antagonistic social class relations. Certainly to the women victims of such inhuman and degrading treatment the reasons for subjecting them to the social and physical injury is immaterial.

4. A CRITIQUE OF LAWS ON RAPE IN SOCIETIES WITH ANTAGONISTIC SOCIAL CLASSES: THEORY AND PRACTICE

Hardly any indictment for the offence of rape was made by the state authorities in Kenya following the events of August 1982. This is despite the fact that most of the "looting" of shops and the mass rape of females were widely reported, with little analysis, in the news media [3]

However, it is this very reason of non-mobilisation of the existing law on rape that provides the urgency for reflection on why this was the case and also what the limitations of the existing laws are even where they are mobilised. It is vital for the understanding of class relations and class struggle to realise that most laws, at best in their formulations if not enforcement, express the balance of forces in class struggle at particular junctures in history. In other words, formal law expresses the power of ruling, exploiting and oppressing classes, on the one hand and the subordination of the oppressed classes on the other hand. To the extent that the minority ruling classes are in power, most laws simply express their interests. In the present context, therefore, it will be seen that laws on rape either in their formulation or in their mobilisation and/or non-mobilisation express interests of the neo-colonial bourgeois state and the predominant classes who control the State. They are men fully imbued with the ideology of class/sex oppression. Because of the contradiction and antagonism between the social classes in power and those who are oppressed and ruled the oppressed may and can win certain concessions reflected in law without necessarily changing the fundamental class divisions in society.

Any act of coerced male sexual intercourse with a woman whether under conditions of armed conflict or in peacetime is unlawful in virtually all modern States; the wrongfulness is both of a general public nature (criminal) and/or of civil or private nature (delictual or tortious). Rape is not simply a crime, as most defective bourgeois legal training and ideology led us to believe. Rape in the context of armed conflict is also not merely a wrong recongnised in municipal law but is an international crime recognised in international law and municipal laws of most, if not all, modern States.

In the Kenyan Panel Code (Chapter 63, Laws of Kenya), for example, the commonly known provisions relating to rape are sections 140 and 145, read together. The maximum penalty for the crime is life imprisonment with hard labour with or without corporal punishment. Curiously enough, however, child defilement (rape of a girl below the age of 14 years old) is only punished by a maximum penalty of imprisonment for 14 years with hard labour as well as corporal

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3. among others: The Nairobi Times (August 18th 1982); Africa Confidential (London) vol. 23, No. 7 of August 25th 1982; The Times (London) of August 25th 1982; Viva "Coup Special Edition" (Nairobi) August, 1982; and in South (London) January 1983.

punishment. The inadequate reflection of the seriousness of child defilement as compared with rape of older "women" above the age of 14 years is apparent here. Furthermore, child delilement is permissible since there is a defence for child defilement if the criminal can prove that he had a "reasonable cause to believe and did in fact believe that the girl was.....his wife". In other words, a child below the age of 14 years is deemed not to have the capacity to give free consent to sex but is deemed to possess that capacity within a marriage! The utter contempt for female children is so apparent and absolute in these provisions that it does not add anything useful to heap more denunciations. This is weakness number one in Kenyan lawson rape.

The maximum penalty for rape in Kenya as indicated above is only "maximum" to the extent that bourgeois legal training and culture normally treat specific crimes or other legal wrongs in very mechanistic and disintegrated manner. The actual truth is that even in the prevailing bourgeois legal system to-day the penalty for rapists and the remedies for rape victims are much wider on paper although they are hardly ever invoked in their totality in practice.

Bourgeois (and hence, petty-bourgeois) legal culture has the unhappy methodology of abstract dismembering the social wrongs, between subjects and within single subjects. This has a very significant effect in diverting proper focus on social structures and forces. In criminal law as a whole, for instance, the bourgeois legal ideology does not view the subject as essentially concerned with only three fundamental and interelated aspects: the protection of the State, the person and property. Crimes relating to protection of the person are so scattered that to know which one belongs to "morality" and which ones do not is difficult. Abortion, indecent assault, bigamy, beastiality, sodomy and sometimes rape are often grouped as crimes of "morality" thus giving the impression that other crimes such as treason or robbery have no moral basis - which is not true. It is partly for such mystifications that rape cases are rarely successfully detected, brought to Court and successfully prosecuted. Instead of teaching that the act of coerced male sexual intercourse with a woman constitutes violation of constitutional rights, they limit the instruction to a level where lawyers, law enforcement officers and judges become very one-track-minded. The consequences are great because if rape is the only thing charged and it is not proved, the offender is free according to the principle which protects the individual against double-jeopardy. This illustration is an example of dismemberment within a subject.

The other, the dismemberment of social wrongs between subjects without appreciating their basic unity, is achieved, in bourgeois legality, through abstract separations for example, between delict (tort) and criminal law. Again here, acts which constitute the crime of rape naturally constitute the torts of false imprisonment, negligence, assault, etc. But since the subjects are ideologically and practically separated, in terms of mobilisation of legal remedies, the victims of rape nor their legal counsel ever think of simultaneous or consecutive institution of criminal and civil action. If this were done, the victims would have not only double their chance of proving their cases at different levels but would actually stand better chances in the civil action since the burden of proof in civil matters is easier to discharge than in criminal cases. The other advantage of taking combined civil and criminal action as a crucial process in dealing with rape and its consequences is that in civil action the perpertrator of the wrong makes material compensation to the victim and not to the State.

The abovementioned last post requires further explanation for it does expose the complicity of the judges in the conspiracy of silence which leads to incomprehensive mobilisation of the various categories of punishments for wrongs categorised as criminal cases that might help to mitigate the losses on the part of victims of crime. In theory and many legislative enactments judges have the discretion and power to choose among a large array of punishments they can order upon criminal conviction of offenders. These include forfeiture of goods which are the subject of the crime, fines, imprisonment, compensation to the injured, corporal punishment (in many jurisdictions, if not all [4], community work etc. Practically all modern secular societies provide such alternatives (for Kenya these are provided for under the Penal Code, sections 24 - 39) punishment for criminal wrongs have been simply confined to those areas like fines that allow for collections of revenue for the State and unproductive custodial sentences. Indeed, women are already fighting the inadequacy of reddress in rape cases. In December 1982 I witnessed a group of young women parading by Russell Square, near the Institute of Advance Legal Studies, University of London, with some placards reading":

A. "COMPENSATION FOR VICTIMS OF RAPE".

The British Prime Minister, Mrs Thatcher, was at the time busy providing an essentially redundant solution to women victims of rape - the trial of rape cases by senior judges as if senior judges are not the depositories of conservatism!

It is the view here that real permanent solution to rape of women lie in social transformation that will realise genuine equality between men and women and among all persons in social production. Equal participation in all aspects of production, distribution and exchange removes the class/sex contradictions and provide a basis for the elimination of the crime such as rape. In societies where such real socialist revolutions have taken place and matured, there is every need to maximise the possible protection against rape and to increase the remedies that rape victims may get. Rape is not simply a "crime of passion" - it is a most serious violation of the mental and physical integrity of the individual.

The fact that there was not even a single offender who was arrested, tried and punished for rape following the numerous reports and complaints by victims and witnesses in August 1982 in Kenya is an open testimony to lawlessness of the neo-colonial regime in Kenya.

We now turn to the position of the law on rape at the international level and Kenya's obligations thereunder which were not adhered to as evidenced by the immobilisation of the law in 1982.

International law, like other forms of law, is a reflection of prevailing national and transnational material conditions and balances in continuing class struggles. This is particularly the case in international law of human rights which is directly relevant to the present subject matter of our discussion. Bourgeois publicists would, however, like the world to view human rights as simple "gifts" of generous or enlightened leaders.

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4. In Zimbabwe a recent case of S. Ncube and Others vs. The State, Judgement No. S.C. 156/87 corporal punishment was declared unconstitutional.

The subject of rape can be discussed in this field at the level of general law that proscribes torture or cruel, inhuman, and degrading treatment or punishment, whether in time of war or peace. In the context of war, such rules were provided, although with limited precision, in Article 6 of the Charter of the International Military Tribunal which was established on August 8, 1945 as an annexure to the treaty between France, U.K., U.S.S.R. and U.S.A. to try what they considered to be "War Criminals." The tribunal was a typical emergency court. However, its principles, the Nuremberg Principles, which allowed for the punishment of war crimes and crimes against humanity which included torture, ill-treatment, and inhuman treatment of civilians were subsequently ratified by the U.N. General Assembly resolutions 3(1) and 95(1) of 1946. Although few, if any, were tried for rape within these rules, the rules gained ascendency in 1948 by their incorporation as general human rights principles in Articles 5 and 12 of the Universal Declaration of Human Rights. [6] Article 3 of the European Convention of Human Rights, 1950, again reinforced the principle for countries within the West European regional geo-polity. Further concretisation of the principles against torture, cruel, inhuman or degrading treatment was made in a treaty from under Article 7 of the International Covenant on Civil and Political Rights [7] which became effective in 1976 and to which Kenya became a Party to in 1972.

Article 8 of the Universal Declaration for Human Rights, and Article 2 of the International Covenant on Civil and Political Rights, call for effective compensation to the victims of violation of the principles prohibiting torture, ill-treatment and inhuman treatment and Article 4 of the latter does not allow derogation from the principle even in war emergency situations.

The U.N. went further to ensure effective detection and punishment of those who subject others to torture, inhuman and degrading treatment such as rape through the General Assembly Resolution 3074 (XXVIII) [8]. This called on all States to institute judicial trials of nationals for these "war crimes" and "crimes against humanity" and to co-operate with each other in the exercise. In 1974 the Declaration of the Protection of Women and Children in Emergency and Armed Conflict, (U.N.G.A. Res. 3318 (XXIX) was also passed. Two of the Declaration's vital provisions read as follows:

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5. Agreement for the Establishment of an International Military Tribunal, U.N.T.S. 4 (1945), Cmd. 6671; 5 U.N.T.S.251.

6. G.A. Res. 217 (111) 1948 which stated at Article 5 that "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment" and Article 12 which proscribed".... honour and reputation" and went on to decree that "Every one has the right to protection by the law against such interference or attacks".

7. G.A. Res. 2200 (XXI) of 16.12.1966 which became effective on 23rd March, 1976.

8. Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, Articles 2 and 4.

9. U.N. Gen. Ass. Res. 3452 (XXX), 9.12.1975.

> Article 4: All efforts shall be made by States involved in armed conflicts..... to spare women and children from the ravages of war. All the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children.
>
> Article 5: All forms of repression and cruel and inhuman treatment of women and children including imprisonment, torture.... collective punishment,..... committed by belligerents in the course of military operations.... shall be considered criminal. (emphasis added).

It is important to note that despite these lofty principles, the reports within the U.N. on how these principles are adhered to reveal very little evidence of concern with mass rape of women in practically every armed conflict, be it of internal or international character. [10]

All the international legal instruments we have reviewed so far do not specifically isolate rape as a special form of torture, cruel and inhuman and degrading treatment. However, the formal interpretation given to the concepts of torture, cruel and inhuman treatment in the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment do allow for the inclusion of rape. After re-affirming the principles contained under Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights, which we have described above, the 1975 Declaration proceeds to define these terms and to urge for effective remedies,

The Declaration proceeds in Article 8 to call for not merely punishment of those guilty of the offence but that "the victim shall be afforded redress and compensation". In fact within the Kenyan context, the Constitutional (Section 74 and 84) incorporate these international standards, requiring compensation to the victims of "torture, inhuman and degrading treatment". Notwithstanding this, the Kenyan Courts, like most courts in sexist class societies hardly ever take due notice of these more substantive formal responses to rape instead they continue to treat it as a simple offence confined to national Penal Codes provisions.

Besides the above international legal instruments that may and should be invoked in situations such as those prevailing in Kenya in August 1982, rape is especifically made an international criminal offence under the 1977 Protocal Two Additional to the Geneva Conventions of 12th August, 1949, and Relating to the Victims of Non-International Armed Conflicts as well as Protocal One, which deals with international armed conflicts. Protocal Two, which is relevant here because of the internal character of armed conflict that occurred briefly in Kenya in August 1982, prohibits the following:

> (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution or any form of indecent assault;
>
> (h) threats to commit any of the above acts. (Emphasis added)

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10. see: United Nations in the Field of Human Rights, ST/HR/2/Rev. 1. New York, 1980 at pp 216 - 228 and 235 - 244.

Kenya is party to the General Conventions and has transformed them into national (municipal) law by virtue of the Geneva Conventions Act (Chapter 199, Laws of Kenya). All State Parties to the Conventions have assumed the obligation to effectively impart these laws of armed conflict to their armed forces. The mass rapes that occurred in Kenya in August 1982 were committed not only by the armed servicemen strictly so defined but also by the other armed organs of the state, the Police and the General Service Unit whose moral standing and behaviour is quite akin to the notorious fascist South African Koevoet forces operating in Namibia. It is academic to consider the so-called para-militarists, like the G.S.U. in Kenya, and the police as not being part of "armed forces".

Although countries which are Party to the Geneva Conventions undertake to educate their armed forces on the provisions of the Conventions, such education is not encouraged in Kenya and hence the regularity with which the armed forces indulge in mass raping of women whether these be university students or the general public. The 1982 rape incidents and their non-prosecution was not an isolated occurance in Kenya at all. The non-mobilization of the laws on rape by the Government in Kenya was therefore in violation not only of national laws but also of firmly established international law. The international community as a whole are under obligations to ensure that the responsible criminals and those in charge of them are brought to book. The victims should be entitled to the remedies promised in the law.

The question that remains to be answered now is why nothing was done about the rape crimes of August 1982 when, in fact, there was speedy prosecution of those who were alleged by the State to have looted shops?

5. CONCLUDING REMARKS ON NON-MOBILIZATION OF LAWS ON RAPE AS REFLECTIONS OF CLASS/SEX CONTRADICTIONS AND STRUGGLES

We stated earlier that laws reflect the conjecture of the balance of social forces in class struggles at particular junctures in history. The formulation of laws is, however, only one of the aspects of this historical phenomenon. An equally important aspect is the mobilization of the law, i.e. the actual implementation of the law since law is not self-initiating without active human reflection in the mind and action. The non-mobilization of the national and international laws on rape in the phase of the events of August 1982 in Kenya, as is the case in many such situations, simply reflects the prevailing material conditions and how this is reflected in the culture which includes law formulation and implementation.

States and other important institutions for the articulation of laws on rape in partriarchal capitalist or semi-capitalist societies like Kenya are presently dominated and controlled by oppressive males and/or male ideology. In otherwords, the ruling bourgeois social ideas are both class and sexist ideas. This is true for Kenya as well as for most of the pre-socialist international community.

The State with its reformist organs such as the Women's Bureau did not see it fit to expose the gross mistreatment of women. This is irrespective of whether or not a female was then nominally the head of the Women's Bureau. The same applies to the numerous so-called "Women's Organizations" in the country. Most were and are conveniently headed by women with extremely limited class

consciousness. They are carefully chosen from wives, relatives or confidants of the local petty-bourgeoisie or comprador bourgeoisie who control State machinery. Such women have no independent social base and depend on the largesse of the wealth plundered from the working class and peasants. It was quite noticeable that as reports were coming out about the mass raping of women, none of the organizations came out to pursue the matter while some were busy at that very relevant time organising feasts with Judge O'Connor from the U.S.A. who was made a judge precisely because she had demonstrated judicial blindness to the plight of women and larger social struggles of the masses. Other institutions and individuals vocal on the issue of social inequalities and repression also remained unusually silent partly as a reflection of State terrorism that has now become a permanent feature of the neo-colonial regime in Kenya.

The international community behaved not very differently. The International Committee of the Red Cross and its world wide associates who are looked upon to monitor adherence to and to expose violations of the laws of armed conflict have yet to indicate concern for the well published mass rape of women in Kenya in August 1982.

The same applies to the U.N. Committee on Human Rights which, under Article 40(1) of the International Covenant on Civil and Political Rights, has power to demand reports from governments upon suspicion that a State Party to the Covenant may be deviating from rights protected under the Covenant. There were clear reports that the Kenyan armed forces were committing international crimes against humanity and yet Kenya was not called upon to account for these wrongs. Other international institutions which have declared positions on matters relating to the condition of women, in particular, and other human rights issues, in general, have yet to say something. It is the view here the struggle for women's rights ought not to be limited to economic battles alone, although these are primary. The struggles must be multi-faceted since the oppression of women manifests itself pervasively.